

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF MEDIA ACTION MARIN

These comments are filed by Media Action Marin (MAM) to provide the Federal Communications Commission (“FCC”) with information on the importance of locally based Cable Franchise responsibility.

Media Action Marin is a local civic media advocacy organization. It is a task force of the Social Justice Center of Marin. Media Action Marin (MAM) has been very active in working with, and lobbying before the Marin Telecommunications Agency (MTA).¹ In general, MAM associates itself with the Comment being filed in this proceeding by the MTA. As pointed out by the MTA, the experience of this community demonstrates the importance of preserving local franchising of incumbent cable operators and new entrants in order to ensure universal service without discrimination based on income; deliver Public, Education, and Government (PEG) programming to the local community, among other priorities.

¹ All members of the MTA are members of either the County Board of Supervisors or the City Council of the constituent towns and cities.

MAM urges the FCC to preserve local franchising for not only incumbent cable operators but also new entrants, and to not limit the existing authority of local agencies to secure the types of community benefits and protections described by these comments and those of the MTA.

The Importance of Citizen Participation in Media Policy on the Local Level

Media policy is one of the most important public issues in a democracy. Today, it is only at the level of cable franchising and related issues that media policy is made on the local level. This provides an opportunity for voluntary citizen organizations to participate actively in the process. That opportunity is lost if all policy is made in Washington, or even Sacramento.

The Comment of the MTA sets forth its history and powers. The purposes of Media Action Marin are well-stated as follows (from our website, www.mediaactionmarin.org):

We are people from all walks of life who have become galvanized because of the lack of completeness and balance within the media. We are committed to Media Democracy, that is democratizing/opening up all aspects of public information and communication We believe that [media] structures must be free of coercive forces and have transparency in the governance and delivery of information for the public good. We believe it is imperative that there be informed citizenry, versed in critical thinking, if we are to thrive as a society.

We have been instrumental in addressing ... issues relating to community access here in Marin. The most recent focus here in Marin is the franchise agreement that is being negotiated by Comcast and the Marin Joint Powers Authority. Media Action Marin is working to ensure that the Marin Community has access to the public airwaves, which we own.

As a citizens' group, MAM meets at least two Sundays a month and attends all meetings of the Marin Telecommunications Agency. We have developed strong working relationships with many members of the MTA and frequently speak at their public meetings.

MAM has helped to educate the MTA to the importance of providing an independent community media center here in Marin. As a citizens' group, we have educated ourselves with respect to the often complex issues surrounding cable franchising and the provision of community-based media. Quite frankly, we have had, on the whole, more time to devote to this issue than the members of the MTA itself. Discussions at the MTA meetings have become far more informed with less reliance on professional staff.

The role of Media Action Marin has recently been recognized in its appointment as one of the constituent organizations of a committee now established by the MTA to plan for the implementation of Public, Educational, and Governmental (PEG) programming and a Media Center under the Franchise which is about to be signed.

Some of the history of the growth of this grass-roots community group and its effective role in developing cable policy in Marin County is fully set forth in the upcoming book entitled "BE THE MEDIA" in the chapter "How to Create a Community TV Station and Media Center." Relevant excerpts from the present draft of that chapter are attached hereto as Appendix A.

IN SUM, Media Action Marin has been gratified to play a significant role in the development of media policy for our community. We could not have done so if media policy was being made in Washington, or even in the state capitol. We urge the FCC to **strengthen** the authority of local franchising agencies in making cable and other media policy. There is no reason whatsoever for weakening local authority and an urgent need to continue to foster citizen involvement at the local level.

Respectfully submitted,

By: Peter Franck, Chair

Media Action Marin

Appendix A

From the book: “**BE THE MEDIA**” (publication date April, 2006)

How To Create And Sustain A Non-Profit Community Media Center (Chapter 4, Part 1)

By David Mathison

Building Community Through Media

More than a million people from thousands of community groups use Community Media Centers to learn how to run TV cameras, design sets, arrange lighting and manage post-production and editing. These people, largely volunteers, come from high schools and colleges, clubs, groups like the League of Women Voters, the NAACP, the Urban League, Chambers of Commerce, religious institutions, labor unions, military and veterans groups, the disabled, politicians and the US Department of Education, among many others. According to the Alliance for Community Media, *“These volunteers produce more than 20,000 hours of new local programming each week. That's more than all the programming produced by NBC, CBS, ABC, FOX and PBS combined!”*

Your Local Cable TV Franchise Renewal

As Media-Alliance Executive Director Jeff Perlstein points out, *‘Cable television is the only area where big corporations must sit down with local people in dealing with media and services.’* Cable franchise renewals are important because they set the communications agenda for your community for the next 10-15 years. The cable franchise renewal process involves many people, including cable executives, city staff, elected officials and local community residents. The renewal process should include an exploration of community telecommunication needs and interests, an evaluation the past performance of the cable operator, and a negotiation process.

Case Study: The Cable Franchise Renewal in Marin County, California

1998-2002: Ownership Consolidation - From AT&T Broadband to Comcast

In Marin County, California, what began several years ago as a plea by one individual for a strong franchise agreement and a quality local media production facility, has become a movement to create a bold vision for community media. In 1998, self-described “ordinary housewife” Natica Lyons was upset with her local cable provider and the (non) coverage of the issues by the media. She attended the Marin Telecommunications Agency (MTA) meetings, but was usually the lone voice representing the public. The Chair would interrupt Tica during public comment. Reports would be promised and not produced. Tica felt that the MTA was stacking the agenda so there was little time for public comment.

Over the next few years, a community media advocacy group called Media Action Marin (MAM) was formed to allow for more public participation into the process, and to be sure that the local franchise authority would be responsive to community needs

and interests. Comcast had violated numerous terms of the existing local cable franchise agreement, and Media Action Marin members pointed out that the community should be entitled to a Media Center run by a non-profit with locally elected board members who represent the diversity of Marin – not the strictly commercial desires of Comcast.

The MTA was created in 1998, with the intent to bring uniform, high-quality cable service to Marin through the power of collective bargaining on behalf of all the towns. By early 2001, the franchise renewal negotiation with AT&T was going well, with a strong commitment to public access. In the fall of 2001, AT&T increased its contract offer to include a PEG monthly per subscriber contribution of \$1 to be adjusted every 5 years based on the Consumer Price Index. The upfront contribution was increased from \$250,000 to \$750,000. Towards the end of 2001, Comcast announced that they would acquire AT&T. By September 2002, agreement was reached on the franchise terms, but no public hearing took place, as the AT&T/Comcast merger was completed in November 2002 and Comcast refused to agree to the AT&T deal on the table.

The Players

- **The Marin Telecommunications Agency (MTA)**: The MTA is a joint-powers agency consisting of the County and the incorporated cities of Marin (Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito and Tiburon). Prior to the formation of the MTA, cable companies contracted with one or more Marin communities. The result was that services provided, cost of service and quality of service varied widely. The MTA was established in March, 1998 with the intent of bringing uniform, high-quality cable service to Marin through the power of collective bargaining on behalf of all communities. Comcast has a separate contract with Novato, and West Marin is served by Horizon Cable. The MTA's legal counsel is Gregory Stepanicich, who is also Attorney for Mill Valley.
- **The Media Access Advisory Committee (MAAC)**: The MTA created an advisory council called MAAC chaired by local resident Bruce Bagnoli. The MAAC spent months researching and getting input from specialists in telecommunications and cable access, and studied dozens of PEG organizational models. Their February 2002 report recommended that a non-profit run Marin's community access center.
- **Media Action Marin (MAM)**: Media Action Marin is Marin's community media advocacy group. It consists of a diverse group of people from all walks of life who believe that people should control the means and methods of communication, and that the identification as well as the definition of an issue should be community generated. MAM helped assist with issues at KPFA and Pacifica, and helped build support to re-instate the FM-band on Comcast cable. Media Action Marin was instrumental in getting Democracy Now! onto

Comcast Channel 26. MAM members sponsor the show's time slot. MAM is very active in lobbying the Marin Telecommunications Agency to negotiate firmly with Comcast to ensure that there will be a Community Media Center, adequate channel space, and funding for PEG.

- Consultant: In late 2004 the MTA hired Tom Robinson of CBG Communications. The goal was to have an experienced cable consultant who would work closely with local representatives throughout the franchise renewal process and negotiation. Mr Robinson met with MTA counsel, staff, town council members, the public, and stakeholders in the franchise area such as nonprofit organizations and community leaders. Tom reviewed documents related to the cable franchise, including agreements between the Marin JPA, Comcast, previous cable companies (Viacom, TCI, AT&T Broadband), town codes, the Enabling Ordinance, Needs Assessments and Past Performance Reviews.

November 2003: Tica's Push for an Expanded 'Needs Assessment'

The minutes from 11/12/03 MTA meeting reflect the depth of Tica's understanding, commitment and involvement. As you can see, she pushed hard to get a revised and expanded Needs Assessment to help improve the MTA's negotiating posture:

"Tica Lyons said you are naïve. She objects to many things too numerous to say here. She disagrees with Director Kilkus' statement that technology has not changed much since 1999. The staff is coming on like used car salesmen. The 1998-99 Needs Assessment is insufficient for use at the negotiating table. It won't take you very far. The board's action is penny-wise and pound foolish. You have spent hundreds of thousands of dollars on staff salaries and on consultants. You are overly pessimistic. You have an anemic negotiation posture. It's time to get consultants familiar with the San Jose case. The Needs Assessment is weak."

By late 2003 Tica hired an attorney to address her concern that the government provide channels for the P (Public), as well as for E (Education) and G (Government). She knew that Marin had a legal right to a media center owned and operated by the community, independent of the cable operator, and she was determined to push forward.

April, 2004: Amy Goodman and Democracy Now!

In April 2004, Media Action Marin members went to see Amy Goodman speak at a local independent bookstore, *Book Passage*. The goal was to gather petitions in order to get Amy's award-winning, non-commercial news and information program, *Democracy Now!*, aired onto Comcast's 'public access' channel 26. MAM collected over 300 signatures from an overflowing crowd of enthusiastic *Democracy Now!* fans, and presented the petitions to the MTA at the next meeting. Steve Fein of MAM conducted a survey of Northern California public access television stations and found that not only did the majority carry *Democracy Now!*, but it was one of the most popular programs. MAM requested that the MTA have Comcast allow satellite broadcasting of the program on channel 26 as soon as possible.

After a few months of resistance, MTA directors finally agreed to acquiesce and make Comcast broadcast *Democracy Now!* on Channel 26. However, this still did not happen overnight. Later in the year, with *Democracy Now!* still not available on 26, MAM member Steve Fein surveyed local stations and found out how *Democracy Now!* was being delivered to other Community Media Centers. Steve then created a spreadsheet and presented his findings to the MTA.

November 10, 2004: MTA Meeting – *Democracy When?*

Two members of Media Action Marin videotaped this meeting. Saying she was concerned about “*favoritism and special treatment regarding items to be agendized*,” Marin County Supervisor Susan Adams pushed for an open public session with respect to the draft franchise agreement with Comcast. Director Larry Bragman of Fairfax said that Channel 26 was still not able to broadcast *Democracy Now!* and that the program was in legal limbo. Comcast resisted the commitment to install the *Democracy Now!* satellite dish. The satellite provider, Echo Star, and Free Speech TV reported that they could not sign an affiliate agreement, nor deliver *Democracy Now!* to Marin because Channel 26 is not a ‘true’ public access channel. Comcast was broadcasting commercial programs on Marin’s only PEG station in direct violation of public access broadcasting rules and the local cable franchise agreement. Director Bragman remarked “*That is why we must have public access.*”

One positive outcome of the *Democracy Now!* fiasco was that it alerted everyone to Comcast’s flagrant violations of the franchise agreement, specifically with regard to community programming. In Marin, Comcast owns and operates Marin’s only PEG station (Channel 26), and only allows five (5) hours per day of public access, non-commercial content, Monday through Friday. The rest of the day, and all weekend, Comcast aired infomercials and commercial content on the channel, corrupting it, making Channel 26 ineligible for certain satellite distributed programming like the non-commercial *Democracy Now!*

Chairman of Media Action Marin Peter Franck sent a letter to the Chairman of the MTA, asking Comcast to immediately dedicate Channel 26 to PEG-only uses. Peter included a resolution asking the MTA to support it. Finally, months later, in March 2005, the MTA voted that Comcast should end all commercial broadcasts on Channel 26. In April 2005, Comcast agreed to end all commercial broadcasts on Channel 26 by the end of May 2005, and to begin broadcasting *Democracy Now!* in June, 2005.

December 10, 2004 MTA Meeting: The Public Access Workshop

It was clear that a lot of education was still necessary. For example, The MTA representative from my town told me after a local Town Council meeting “*most residents in this community turn on the remote and cable turns on. That’s all they care about.*” The MTA therefore planned a public access workshop to educate city staff, elected officials, and community leaders, and to engage the public. MAM widely publicized the meeting and ensured that it was well-attended by concerned Marin

County residents. The workshop included representatives from Comcast, other community non-profits and local citizens interested in community media. Speakers included:

- **Johnnie Giles, Comcast's Vice President for Government Affairs.** Giles admitted there was an inherent conflict between public access users and a Comcast-owned facility. When told that existing commercial broadcasts on Marin's sole public access channel were interfering with public access programming, he declined to be specific about a solution. During public comment, MAM member Tica Lyons said that "*Comcast is not that good at running local media centers. They've shown in their corporate statements that they really don't care much about public access.*"
- **Ron Cooper, Executive Director of Access Sacramento.** Access Sacramento is a community non-profit that broadcasts on seven cable channels, including two educational channels, one PBS channel, a government channel, and a community use channel. Staff focuses on training the public to produce creative and educational programs in both English and Spanish.
- **Jerry Kay of New Digital Video Technology** stressed the importance of citizen involvement, the need to offer young people communication and production skills, and the desire to provide communities with multiple production centers – "studios in a suitcase" – as opposed to only one centralized production facility. "*Local businesses would benefit,*" Kay continued, "*as newly trained writers, directors and managers pass through the training system armed with skills valuable to the local economy.*"

The vision for community media detailed that night was enthusiastically received by the standing-room only audience. Trish Hibben of the Media Access Advisory Committee said that "*this was the best meeting they've [the MTA] had. All the speakers confirmed what the MAAC has been saying for years with respect to nonprofit governance and technological convergence.*"

The Franchise Negotiation

Franchise negotiations usually take between 2-3 years, so it is wise to begin the process a few years before your current franchise agreement ends. With a professional consultant having completed the expanded Needs Assessment, Past Performance Review and Public Access Workshop, the MTA was now in a much better position regarding their negotiating posture. They knew that Comcast had violated numerous terms in the existing franchise agreement, and they better understood the needs and interests of the Marin community.

A Community-Based Non-Profit is the Preferred Management Structure

Non-profit management is the broadly accepted and most successful model for Community Media Centers in the US. For example, in California, non-profit managed PEG centers are in place in San Francisco, Berkeley, Oakland, Oceanside, Sacramento, Davis, Gilroy, Santa Cruz, Monterey, Mountain View, Petaluma, Napa,

Novato and Santa Rosa. Steve Fein of Media Action Marin conducted a survey of these sixteen northern California cities. Of the 16, all but one (15 cities) have all PEG channels operated by a non-profit. In the remaining city, the city operates the government channel, the school system runs the education channel and there is no public access.

In an official assessment of Marin's cable needs and Comcast's performance, MTA cable consultant Tom Robinson filed a report critical of Comcast, and found that Comcast had done a consistently poor job of providing adequate facilities, equipment, and technology to the Marin PEG system. Mr Fein urged the Board to guarantee through a resolution that the public access facility be run by a non-profit. He read the resolution at an MTA meeting and circulated a copy to the Board. He re-stated the results of the consultant's report, and added that in 2002 the MAAC said that the most common PEG management model is run by nonprofits, He concluded by saying that the PEG management model with the best chance for community buy-in and long-range success is that run by a non-profit.

Draft A Resolution and Proposal for a Community Media Center

Don't wait for your cable provider – or your local franchise authority – to draft a proposal. Write your own. This way you set the terms and can include provisions favorable to the community. MAM members Val Schaaf and Peter Franck created a proposal after evaluating comparable local franchises and basing their financial projections on the figures in the consultant's report. Their proposal included a Designated Access Provider (DAP) clause that would allow the Marin Telecommunications Agency (MTA) to transfer administration of PEG channel operations to an appropriate nonprofit organization when the latter is ready. Under the proposal, Comcast would provide the MTA with funds to purchase the initial equipment, replacement equipment as required for the duration of the contract, and the cost of facilities.

Activist Tips: Ideas and Strategies for Community Media Advocates

- **Organize:** Form an organization like Media Action Marin. If your local cable franchise agreement is about to be renewed, create a Franchise Renewal Task Force. If your community doesn't have a community access station – find out why! Try to hold regular meetings complete with agendas and action items. Form an alliance and get other organizations to join or support you. Have your members join groups such as FreePress.net, Media-Alliance.org, and the Alliance for Community Media. It is helpful to get people with differing skill sets – for example, Media Action Marin includes:
 - Natica Lyons: A long-time, persistent activist with tremendous institutional knowledge
 - Peter Franck: An activist attorney really knowledgeable about related legal issues
 - Regina Carey: Chairperson of Marin's Social Justice Center and Brown Act expert

- Bruce Baum: Keeps MAM's web site updated and available
- Norman Carlin: Maintains the email database and sends out action alerts and updates
- Juan Ortega: Monitors public agencies regarding Marin's large Latino population
- Val Schaaf: Created MAM's Community Media Center proposal
- Steve Fein: Does research and creates resolutions and proposals
- **Speak Up:** The Brown Act allows you to communicate directly at public meetings, after every agenda item. MAM members speak regularly at MTA and Town Council meetings. It is best to come with prepared messages – preferably 2-3 minute, sound-byte sized clips.
- **The Press:** In the beginning, MAM couldn't pay a journalist to cover these issues, so we wrote op-eds, Letters to the Editor, corrected erroneous articles, appeared on local TV and radio, etc. Today MAM members are sought out by the press to interpret events and we are being quoted in articles as experts. The concept of a Community Media Center is now universally accepted and editorialized in the local press, as well as political, academic and financial circles.
- **Surveys:** Be ready to exploit volatile issues to get visibility with the press and the public. For example, Comcast unilaterally pulled FM off the cable band, which infuriated residents and the press. MAM created an FM Radio survey that returned 81 email/telephone responses and 434 station preferences, which gained visibility for MAM in the community. MAM had such an impact that Comcast representative Johnny Giles subsequently set up a meeting with MAM.
- **Events:** Go to related events such as the Amy Goodman/Democracy Now! event at Book Passage for a petition drive, or MAM's demonstration at the NCTA conference in San Francisco. Or create an event - such as when MAM welcomed the new General Manager of KPFA Radio to the community. Again, capture email addresses and contact information.
- **Television:** MAM members videotape MTA meetings and use Comcast Channel 26 to air videotaped MTA meetings.
- **Persevere:** Be relentless and persistent. Take the time necessary to reach a successful conclusion – most renewals with positive outcomes take 2-4 years to complete.
- **Solutions-oriented:** Be solutions-oriented, don't recite known problems. Don't whine, propose - it sets the terms of the debate. Advance issues through presentations, meetings, agenda items and position papers. Establish renewal goals that look into the future! Do not accept 'no' for an answer – look for new ways to reach the same goal. Be flexible, be positive, forward-looking and community-minded.
- **Alternatives:** Other municipalities are creating alternatives such as introducing competitors to the bidding process, creating "free" wi-fi wireless internet access, or "municipalizing" the franchise, which is where the municipality takes control. Be open to different ideas.
- **Community Support:** Get support from local politicians, businesses, nonprofits, academia. Exchange information with other communities where cable franchise

renewals are occurring. For example, MAM solicited and received advice from community media advocates in San Francisco, Berkeley, Novato, Sacramento, among many others, as well as the Buske Group and CBG Communications.

- **Communicate with the public:** Use mailing lists, newsletters, letters to editors, op-eds, etc. Create a speakers bureau to help develop and sustain community support. Target civic organizations and stakeholders in the Community Media Center.
- **Web site:** The creation of the MAM web site by Bruce Baum was critical to MAM's ability to strengthen the core group and get MAM's message out to the community. Keep your web site updated and write or solicit articles to drive traffic and discussion. It is also critical to have this infrastructure to capture email addresses and send out email updates, and to mobilize the constituents to upcoming actions. MAM's web site has also received requests for advice from other localities, such as the Mayor's office.
- **Elected Representatives:** MAM held briefings with the offices of California Senator Carole Migden and Congresswoman Lynn Woolsey, who supported the community on FM. Representative Woolsey also wrote a letter to the MTA on MAM's behalf in support of a non-profit community media center to administer Marin's PEG channels. MAM representatives also met with their individual city council members, presenting them with a package that included Val Schaaf's proposal for a Community Media Center. Work with your town council members, not against them. Align your interests with theirs. You'll get more traction if the Town Council members see that the community cares. Unlike the cable provider, these officials are elected, and must respond to the desires of the community or risk not getting re-elected.
- **Celebrate Victories and Have Fun:** Celebrate and announce your victories. Have fun while you are at it! For example, Media Action Marin has been known to occasionally have meetings over (California) wine and (California) cheese.

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